IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.419 OF 2004.

Madhav Shripad Yeole
& Others ..Appellants

versus

Pandharinaht Bhikaji Yeole
& Others ..Respondents

Mr.P.S.Dani for the appellant.

Mr. Kishor Patil for the respondent

Coram : S.R.Sathe, J.
Dated : 25th July, 2007

P.C.

1. Heard both the learned advocates.

2. Plaintiff filed suit for declaration and injunction against the defendant claiming therein that the plaintiffs are having a right of way as easement by prescription through the defendant's land. According to plaintiffs, there was cart road, 10feet in width running between the land of the plaintiff on one hand and the defendants on the other hand, described in detail in the complaint. According to plaintiffs the defendants obstructed them from taking their tractor through the said

road. Hence plaintiffs filed the suit for declaration and injunction.

2. The said suit was opposed by the defendants. They contended that the suit way is not in existence and the plaintiffs are in fact using some alternate road or way for going to their land. According to plaintiffs the defendants were not having any right as alleged by them. Hence, they prayed for dismissal of the suit.

3. Both the parties adduced oral and documentary evidence. After considering the said evidence, both the courts below have recorded concurrent finding of fact that the plaintiff has established his right of easement by prescription in respect of the suit way. Naturally, they decreed the suit in plaintiff’s favour.

4. Shri Dani, learned advocate for the appellants- original plaintiffs submitted that both the courts below have not at all recorded the finding that the alleged way was in fact used by the plaintiffs as of right, openly and continuously for the statutory period and in absence of such finding

the decree passed is not correct.

5. From the perusal of the judgment of the trial court as well as the first appellate court it is quite evident that both the courts below have taken into consideration the oral and documentary evidence. They have considered the statements given by the defendant Nos.2 and 4 before the Circle Officer who had recorded the said statement while carrying out an enquiry as per the directions of the Tahsildar, in which the said defendants had in fact admitted the existence of the suit way and plaintiffs right in that behalf. It appears that even the defendants have admitted that there was such enquiry, however it is their contention that their signatures were obtained on blank paper at that time and the statements were in fact not given by them. However, both the courts below have disbelieved this contention of the defendants and expressed that under the circumstances it is difficult to believe that the Circle Officer who was holding enquiry, during his official work would obtain signature on blank papers.

6. Both the courts below have also considered

the Commissioner's report and the map and have given reasons as to why at the time of commission work, which was admittedly carried out after filing of the suit, alleged was noticed only upto the defendants land and then there was no way. So, I have no hesitation to hold that both the courts below have considered the entire evidence in its proper perspective and the finding of fact cannot be said to be perverse. Both the courts have also negatived the contention of the defendant regarding alternate road.

7. It is true that in order to acquire title by prescription, use and enjoyment of right, claim must be adverse to the rights of the owner of the survient in tenament and user must be continuous, uninterrupted, peaceful and must be for a period of 20 years as required by Section 15 of the Easement Act. From the perusal of the judgment we find that the courts below have observed that plaintiffs are in use of the suit way accordingly for nearly about 25 to 30 years. So, it cannot be said that the courts below have not taken into consideration the legal requirement of the easement by prescription and have not recorded any finding on the same.

8. In view of the above, I do not find any error of law in the judgment passed by the Additional District Judge, Niphad. There is no reason to interfere with the said order. Thus, it is very clear that there is no substance in the present appeal. Hence, the appeal is dismissed in limine.

(S.R.Sathe, J.)